

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARIA S. ALVAREZ,

Petitioner,

v.

UNKNOWN, Warden,

Respondent.

Civil No. 12-0270 AJB (POR)

**ORDER:**

**(1) GRANTING APPLICATION TO  
PROCEED IN FORMA PAUPERIS; and**

**(2) DISMISSING CASE WITHOUT  
PREJUDICE AND WITH LEAVE TO  
AMEND**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

**MOTION TO PROCEED IN FORMA PAUPERIS**

Petitioner has \$0.00 on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

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**FAILURE TO USE THE PROPER FORM**

Additionally, a Petition for Writ of Habeas Corpus must be submitted in accordance with the Local Rules of the United States District Court for the Southern District of California. *See* Rule 2(c), 28 U.S.C. foll. § 2254. In order to comply with the Local Rules, the petition must be submitted upon a court-approved form and in accordance with the instructions approved by the Court. Presently, Petitioner has submitted an application for writ of habeas corpus on a non-approved form.

**FAILURE TO NAME PROPER RESPONDENT**

Review of the Petition also reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. *See id.*

The warden is the typical respondent. However, “the rules following section 2254 do not specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v. Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the body” if directed to do so by the Court. “Both the warden of a California prison and the Director of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

1 Here, Petitioner has not named any Respondent. In order for this Court to entertain the  
2 Petition filed in this action, Petitioner must name the warden in charge of the state correctional  
3 facility in which Petitioner is presently confined or the Director of the California Department  
4 of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

5 **FAILURE TO SIGN PETITION**


6 In addition, Rule 2(c) of the Rules Governing Section 2254 Cases provides that “[t]he  
7 petition shall be typewritten or legibly handwritten and shall be signed under penalty of perjury  
8 by the petitioner.” Rule 2(c), 28 U.S.C. foll. § 2254 (emphasis added). Here, Petitioner has  
9 failed to sign the Petition. Petitioner is advised that if she files “First Amended Petition for Writ  
10 of Habeas Corpus,” it must be signed.

11 **CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS** Petitioner’s motion to proceed in forma  
13 pauperis and **DISMISSES** the Petition without prejudice and with leave to amend. To have this  
14 case reopened, Petitioner must file a First Amended Petition **no later than April 13, 2012**. *The*  
15 *Clerk of Court is directed to mail Petitioner a blank First Amended Petition form together*  
16 *with a copy of this Order.*

17 **IT IS SO ORDERED.**

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19 DATED: February 6, 2012

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21 Hon. Anthony J. Battaglia  
22 U.S. District Judge  
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